BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

HOWARD J. POOL)
Claimant)
VS.)
) Docket No. 217,467
GI HAULING, GARY INGRAM)
Respondent	,
AND)
)
FARM BUREAU INSURANCE)
Insurance Carrier)

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated December 16, 1996, wherein Judge Barnes ordered respondent to pay outstanding medical bills incurred by claimant as a result of the injury of December 1, 1995.

ISSUES

- (1) Whether claimant suffered accidental injury on December 1, 1995.
- (2) Whether claimant's accidental injury arose out of and in the course of his employment with the respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of the preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds claimant has not proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment while working for respondent on the date alleged.

Claimant alleges accidental injury on December 1, 1995, while riding as a passenger in an automobile owned by Gary Ingram, owner of GI Hauling.

Respondent raised the question of whether an accident occurred on the date alleged. In support of its position, respondent provided information from State Farm Insurance, the insurance company liable for any automobile accident involving respondent's car. An investigation failed to show damages sustained to either respondent's vehicle or a truck being driven by the other party, Mr. Gordon Kinkead. Evidence presented at the preliminary hearing included pictures of both vehicles, front and back, and indicated no damage sustained to either vehicle.

The description of the accident provided by claimant and Mr. Ingram was of an automobile crash on I-135 in Wichita sufficient to cause claimant to suffer a herniated disk in his neck. Investigation provided by State Farm Insurance and the testimony of Mr. Kinkead indicated that no contact occurred between the vehicles on December 1, 1995. Mr. Kinkead was contacted by the Highway Patrol whose subsequent investigation also found no contact occurred between the vehicles. It is difficult to understand how the impact described by claimant and Mr. Ingram, at speeds approaching 40-50 miles per hour, could have occurred with no resultant damage to either vehicle.

In proceedings under the Workers Compensation Act, the burden of proof is on the claimant to establish the claimant's right to an award of compensation by proving the various conditions upon which the claimant's right depends. This burden must be established by a preponderance of the credible evidence. See K.S.A. 44-501(a) and K.S.A. 44-508(g). See also Box v. Cessna Aircraft Company, 236 Kan. 237, 689 P.2d 871 (1984). Therefore, the Appeals Board finds that claimant has failed to prove he suffered accidental injury on the date alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 16, 1996, should be, and is hereby, reversed.

IT IS SO ORDERED.

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Dated this	day of February 1997.

BOARD MEMBER

c: Joseph Seiwert, Wichita, Ks Darla J. Lilley, Wichita, Ks Nelsonna Potts Barnes, Administrative Law Judge Philip S. Harness, Director